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OFFICE OF PETITIONS

In re Application of :
Rossi : DECISION ON APPLICATION
Application No. 10/581,172 : FOR
Filed: February 6, 2007 : PATENT TERM ADJUSTMENT
Attorney Docket No. : SER.109 :
Title: METHOD FOR PURIFYING FSH :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)," filed November 20, 2009. Applicants request that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from two hundred and seventy-four (274) days to five hundred and one (501) days.

The request for review of the patent term adjustment is **DISMISSED**.

On November 4, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 274 days. The instant application for patent term adjustment was timely filed¹ on or before payment of the issue fee.

It is noted that the 371 acceptance letter (M903) mailed on March 8, 2007 indicates that the fulfillment date (the date of completion of all 35 U.S.C. § 371 requirements) is February 6, 2007 and the priority date is December 22, 2003.

¹ PALM records indicate that the issue fee was received on January 11, 2010.

37 CFR 1.702(a)(1) states that the term of an original patent shall be adjusted by the failure of the Office to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application.

This application fulfilled the requirements of 35 U.S.C. 371 in an international application on February 6, 2007, and a restriction requirement was mailed 14 months and 250 days later on December 12, 2008, resulting in 250 days of examination delay. Petitioner contests this finding and asserts that this mailing resulted in a delay of 477 days.

It is noted in passing that Petitioner makes reference to a decision in US. Patent No. 7,465,444 involving "the 30-month date."² However, Petitioner will note that the 30-month anniversary of the priority date constitutes the commencement date,³ which is used for calculating the period of delay set forth in 37 CFR 1.702(b), and not the period of delay set forth in 37 CFR 1.702(a)(1).

Petitioner's assertion regarding the inaccuracy of the 250-day reduction is not persuasive. The delay is properly calculated as running from the fulfillment date until the mailing of the restriction requirement. Petitioner has erroneously calculated the period of delay by beginning at the commencement date (instead of the fulfillment date) and concluding with the date of the mailing of the restriction requirement.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 274 (274 days of Office delay minus 0 days of Applicant delay⁴) days.

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays

² Petition, page 2.

³ This international application has a priority date of December 22, 2003. The 30-month anniversary of this date, June 22, 2006, is the commencement date of this international application.

⁴ Neither the additional 24 days of Office delay nor the 0 days of Applicant is in dispute.

under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.



Nancy Johnson
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Office of Petitions